

Ordinance No. 52
Adopted: March 8, 2011

The County of Bay ordains the Secondhand and Scrap Dealer Ordinance which shall read as follows:

Sec. 30-351. Definitions.

The following words, terms and phrases, when used in this division, shall have the meaning ascribed to them in this Ordinance, except where the context clearly indicates a different meaning:

Secondhand dealer means any person, corporation, member or members of a partnership, company or firm, that engages in the business of purchasing, storing, selling, exchanging and receiving secondhand goods, including the receiving and selling of goods on consignment, but does not include a scrap processor, automotive recycler, or junkyard that deals principally in industrial scrap, nor to retail merchants who repossess their own merchandise sold on a title-retaining contract or who accept merchandise as a part payment on new sales, nor shall it apply to licensed automobile dealers, nor to persons who conduct rummage sales provided that such sales are not conducted by the same person or at the same location for a period in excess of six days or more than twice in a calendar year.

Secondhand goods means any goods, wares, merchandise or other personal property acquired or purchased after having been acquired at retail and used by another except as excluded herein. Such term includes, but is not limited to, appliances, radios, stereos and speakers, televisions, video equipment, electronic/computer equipment and devices, computer gaming equipment, tools, auto parts, guns, jewelry, precious metals, musical instruments, sporting equipment, bicycles, lawn equipment, snow blowers and other household equipment.

Chief Executive Officer means for a county, the county executive pursuant to MCL 446.203(a)(iv).

Sec. 30-352. Secondhand dealers.

The County Executive is designated and authorized to issue, suspend and revoke licenses for persons, corporations, partnerships, companies or firms to carry on the business of a secondhand dealer pursuant to 1917 PA 350, as amended, MCL 445.401 et. seq., "the Secondhand Dealers Act."

Sec. 30-353. License required: grounds for denial.

(a) No person, corporation, partnership, company or firm, or other entity shall carry on the business of a secondhand dealer in the County without being licensed pursuant to the Secondhand Dealers Act and this Ordinance or the zoning ordinance of the City of Bay City or Ordinance of any other authorized jurisdiction where it is located. A secondhand dealer license is not transferable.

(b) The County Executive may deny an application for a secondhand dealer's license if

the application is disapproved by one or more officers of the county, as provided in this Ordinance, indicating that the applicant is unable to meet or continue to meet the requirements of the Secondhand Dealer's Act or any provision of this Ordinance.

(c) If the County Executive denies the issuance of a license or a renewal thereof, a notice of denial including the reasons for the denial shall be mailed by first class mail to the applicant. If the application for a license has been denied, the applicant may appeal the denial by requesting a hearing pursuant to section 30-391 of this Ordinance, or may reapply at any time by submitting a new application and fee. The notice of denial shall provide that if the applicant wants to appeal the County Executive's decision, the applicant must request a hearing within 14 days pursuant to section 30-391 of this Ordinance.

Sec. 30-354. Investigation by sheriff.

The application for the license with a term no longer than 1 year from the date of issuance shall be referred by the County Executive to the Sheriff for approval, who shall obtain fingerprints from the applicant. The Sheriff shall conduct an investigation and file a report with the County Executive.

Sec. 30-355. License fee and posting.

(a) The fees for processing and issuing a license under this division shall be those fees on file with the County Executive which have been approved by the County Commission. If the application is rejected, a portion of the fee paid, as determined by the County Executive, may be retained by the County to cover processing costs.

(b) All persons obtaining a license issued under this division shall place the license conspicuously in full public view.

Sec. 30-356. Prohibitions.

No secondhand dealer shall loan money on deposit, or pledge of personal property, or other valuable thing, or deal in the purchasing of personal property or other valuable thing on condition of selling the same back again at a stipulated price, without obtaining a pawnbroker's license pursuant to the Pawnbroker's Act and the Bay County Pawn Shop Ordinance.

Sec. 30-357. Application for license.

(a) Application for a secondhand dealer's license shall be made in writing to the County Executive, who is authorized to create application forms and to receive and process applications and to thereafter grant, deny, suspend, or revoke said license as set forth in this Ordinance. Applications shall be on forms supplied by and to be filed

with the County Executive. Such applications shall be signed and dated by the applicant or, if the applicant is not an individual, by an authorized representative of the entity. The application shall contain the following minimum information, plus any other information deemed necessary by the County Executive:

- (1) The name and any alias used, address and telephone number of the applicant and all employees, officers, partners or agents of the applicant;
- (2) The location where the business is to be carried on plus any subsidiary offices and a brief description of the items to be sold;
- (3) The applicant's criminal record, if any, and if the applicant is not an individual, the criminal record, if any, of the partners, members or officers of the entity;
- (4) The criminal record, if any, of any employees of the applicant;
- (5) The applicant's prior experience as a secondhand dealer.
- (6) An authorization for the County Executive and/or Sheriff to carry out a background investigation on the applicant and all employees, officers, partners, members or agents of the applicant;
- (7) A statement as to whether the applicant has ever had a license required by the County or any other governmental entity revoked, suspended, or denied and the reasons for said actions;
- (8) A statement that the information provided is true and accurate and that, if a license is granted, the applicant will abide by all applicable ordinances and statutes.

(b) All licenses are subject to the following conditions, which shall be noted on the application form:

- (1) The applicant shall permit inspection of the licensed premises and/or activity at reasonable times by any authorized representative of the County;
- (2) The applicant shall not engage in the business of a secondhand dealer at any time after the license has expired, without having been reissued, or at any time when the license is suspended or revoked;
- (3) No license shall be issued or renewed unless and until the

applicant and any and all employees, officers, partners, members or agents of the applicant shall, if deemed necessary by the Sheriff, submit to being fingerprinted and photographed as part of the background investigation.

(c) The County Executive shall issue a license to the applicant if the County Executive is satisfied that the applicant has met and will continue to meet the requirements of this Ordinance and all applicable laws and the applicant has paid the license fee.

Sec. 30-358. Reporting requirements, hours of operation.

(a) Commencing no later than April 1, 2011, secondhand dealer shall transmit the record of transaction for appliances, radios, stereos and speakers, televisions, video equipment, electronic/computer equipment and devices, computer gaming equipment, tools, musical instruments, sporting equipment, lawn and garden equipment, guns, jewelry and precious metals as required by Section 4 of the Secondhand Dealers Act to the Sheriff by electronic means over the internet to the website established by the county for this purpose. The County will provide information concerning the website. So long as the required information is transmitted by electronic means, the required statutory form need not be filled out by hand, but a short form with the right thumb print of the individual from whom the article was purchased or received shall be maintained as required by the Secondhand Dealers Act, with an appropriate reference to the transaction. If it is not possible for the person to provide his or her right thumb print, then another specifically designated fingerprint shall be provided. Upon request, the short form containing the thumb print shall be immediately provided to the Sheriff or his/her designee.

(b) Secondhand dealer shall maintain the record of transaction for all other secondhand goods as required by Section 4 of the Secondhand Dealers Act.

(c) No secondhand dealer shall purchase or receive any goods between the hours of 9:00 p.m. and 7:00 a.m.; nor from any person under the age of eighteen (18) years; nor from any person who is at the time intoxicated or from a known habitual drunkard nor from any person known by said secondhand dealer to be a thief or any associate of thieves or a receiver of stolen property.

Sec. 30-359. Suspension.

A secondhand dealer's license issued pursuant to this Ordinance may be suspended by the County Executive which shall be deemed a suspension with intent to revoke. The County Executive shall comply with section 30-341 of the Ordinance in noticing the suspension. The suspension with intent to revoke shall automatically become a revocation of the license unless the licensee requests an appeal hearing within 14 days pursuant to section 30-391 of the Ordinance.

Sec. 30-360. Incorporation of state law.

The Secondhand Dealers Act, being 1917 PA 350, as amended MCL 445.401 et. seq., "the Secondhand Dealers Act" is incorporated by reference as if fully set forth herein. Any violation of the Secondhand Dealers Act shall be considered a violation of this Ordinance.

Sec. 30-381. Definitions.

The following words, terms and phrases, when used in this division, shall have the meaning ascribed to them in this article, except where the context clearly indicates a different meaning:

Scrap processor means any person or entity whose business is, in whole or in part, the dismantling, wrecking and disposing of junk and/or refuse materials, including automobiles, or otherwise reclaiming metals for reuse.

Scrap yard means a place where junk, waste, discarded or salvaged materials are bought, sold, exchanged, stored, packed, disassembled or handled, including wrecked motor vehicles, used building materials, structural steel materials and equipment and other manufactured goods that are deteriorated or obsolete so as to make them unusable in their existing condition.

Sec. 30-382. Scrap processor.

The County Executive is designated and authorized to issue, suspend, and revoke licenses for persons, corporations, partnerships, companies or firms to carry on the business of a scrap processor.

Sec. 30-383. License required; grounds for denial.

(a) No person, corporation, partnership, company or firm, or other entity shall carry on the business of scrap processor in the County without being licensed pursuant to this Ordinance or as approved under the City of Bay City zoning ordinance, chapter 122 or zoning ordinance of any other jurisdiction. A scrap processor license is not transferable.

(b) The County Executive may deny an application for a scrap processor's license if the application is disapproved by one or more officers of the County, as provided in this Ordinance, indicating that the applicant is unable to meet or continue to meet the requirements of any provision of this Ordinance.

(c) The County Executive may also deny an application for any reason identified in this Ordinance.

(d) If the County Executive denies the issuance of a license or a renewal thereof, a notice of denial including the reasons for the denial shall be mailed by first class mail to the applicant. If the application for a license has been denied, the applicant may appeal the denial by requesting a hearing pursuant to section 30-391 of this Ordinance, or may reapply at any time by submitting a new application and fee. The notice of denial shall provide that if the applicant wants to appeal the County Executive's decision, the applicant must request a hearing within 14 days pursuant to section 30-391 of this Ordinance.

Sec. 30-384. Investigation by Sheriff.

The application for license shall be referred by the County Executive to the Sheriff for approval. The Sheriff shall conduct an investigation and file a report with the County Executive.

Sec. 30-385. License fees and posting.

(a) The fees for a license under this division shall be those fees on file with the County Executive which have been approved by the County Commission. If the application is rejected, a portion of the fee paid, as determined by the County Executive, may be retained by the County to cover processing costs.

(b) All persons obtaining a license issued under this division shall place the license conspicuously in full public view.

Sec. 30-386. Application for license.

(a) Application for a scrap processor's license shall be made in writing to the County Executive, who is authorized to create application forms and to receive and process applications and to thereafter grant, deny, suspend, or revoke said license as set forth in this Ordinance. Applications shall be on forms supplied by and to be filed with the County Executive. Such applications shall be signed and dated by the applicant or, if the applicant is not an individual, by an authorized representative of the entity. The application shall contain the following minimum information, plus any other information deemed necessary by the County Executive:

- (1) The name and any alias used, address and telephone number of the applicant, including all officers, partners or members;
- (2) The location where the scrap yard is to be carried on plus any subsidiary locations;

- (3) The applicant's prior experience as a scrap processor;
- (4) An authorization for the County Executive and/or Sheriff to carry out a background investigation on the applicant and all officers, partners or members of the applicant;
- (5) A statement as to whether the applicant has ever had a license required by the city or any other governmental entity revoked, suspended, or denied and the reasons for said actions;
- (6) A statement that the information provided is true and accurate and that, if the license is granted, the applicant will abide by all applicable ordinances and statutes.

(b) All licenses are subject to the following conditions, which shall be noted on the application form:

- (1) The applicant shall permit inspection of the licensed premises and/or activity at reasonable times by any authorized representative of the County, City of Bay City, or other governmental entity;
- (2) The applicant shall not engage in the business of a scrap processor at any time after the license has expired, without having been reissued, or at any time when the license is suspended or revoked;
- (3) No license shall be issued or renewed unless and until the applicant and any and all officers, partners or members, if deemed necessary by the Sheriff, submit to a background investigation.

(c) The County Executive shall issue a license to the applicant if the County Executive is satisfied that the applicant has met and will continue to meet the requirements of this Ordinance and all applicable laws and the applicant has paid the license fee.

Sec. 30-387. Scrap yard regulations.

The following regulations shall be applicable to scrap yards:

- (1) No scrap yard processor or any of the processor's employees shall receive in the line of such business any article by way of pledge or pawn nor loan or advance any sum of money on the security of any article or thing.

- (2) Every scrap yard processor shall upon demand, exhibit all goods which he has on hand and give a description of persons selling the same to any member of the Sheriffs Office upon request, and shall keep a book containing the names from whom he purchased brass, tin, copper, aluminum or any metal except old iron, which book shall be open during business hours to the inspection of any Sheriff officer.
- (3) No scrap processor shall sell or remove from his place of business any article purchased by him until the same shall have been in his possession for seventy-two (72) hours unless such article shall have been purchased directly from some reputable factory or company.
- (4) No scrap yard may store or handle hazardous materials unless done so consistent with all other state, federal, and local regulations.
- (5) A scrap yard is subject to annual administrative inspections or complaint based inspections to ensure the property is maintained in accordance with the health, safety, and welfare of the community, materials are stored in an orderly manner to allow access to inspect, and that the property otherwise complies with the city code.
- (6) Upon conviction of any scrap processor for violating or failing to comply with any provision of this article, the license of such scrap processor shall be revoked and the convicted person shall not be licensed as a scrap processor for a period of two (2) years from the date of his conviction, and the scrap yard shall not be licensed for that particular business for a period of one (1) year from the date of the conviction of the scrap processor.

Sec. 30-388. Hours of operation.

No scrap processor shall acquire goods between the hours of 9:00 p.m. and 7:00 a.m.; nor from any person under the age of eighteen (18) years; nor from any person who is at the time intoxicated or known to be a habitual drunkard; nor from any person with the knowledge that such goods are stolen property.

Sec. 30-389. Suspension.

A scrap processor's license issued pursuant to this Ordinance may be suspended by the County Executive and shall be deemed a suspension with intent to revoke. The County Executive shall comply with section 30-341 of the Ordinance in

noticing the suspension. The suspension with intent to revoke shall automatically become a revocation of the license unless the licensee requests an appeal hearing within 14 days pursuant to section 30-391 of the Ordinance.

Sec. 30-390. Nonferrous metals.

Nothing in this Ordinance should be construed to diminish the requirements that scrap processors and junkyard operators who deal with nonferrous metals must comply with the Nonferrous Metals Act, being 2008 PA 429, as amended, MCL 445.421, et. seq.

Sec. 30-391. Appeals

(a) Any person aggrieved by the denial of an application for a license or by the suspension or revocation of a license as provided by this article, shall have a right to a redetermination and an appeal. Such a redetermination may be taken only within 14 days after notice of such denial, suspension or revocation is mailed to the person's last known address. The redetermination shall be in writing and shall contain a complete statement of the grounds for appeal. It must be filed with the County Executive, together with an appeal fee. The fee for an appeal and/or redetermination under this section shall be those fees which the County Commission has approved.

(b) Within ten days of the receipt by the County Executive of such an appeal, the County Executive shall schedule a redetermination hearing. Unless waived by the appellant, the County Executive shall mail by first class mail a written notice to the appellant of the time and location of the redetermination hearing at least five days prior to that hearing. The redetermination hearing shall be an informal hearing held before a hearing panel consisting of:

- (1) The County Executive or designee;
- (2) The affected department head or designee; and
- (3) Corporation Counsel or designee.

(c) The redetermination or decision of the hearing panel shall be reached by majority vote and mailed to the appellant within seven days of the conclusion of the hearing. The redetermination shall include:

- (1) The appeal application and the type and nature of the appeal;
- (2) The applicant's position;

- (3) The original reason for denial of the license or permit;
- (4) The facts as the hearing panel determined them to be;
- (5) The decision or redetermination of the hearing panel;
- (6) The hearing panel's rationale or basis for the redetermination; and
- (7) The date which the redetermination was placed in a United States mail receptacle by the County Executive.

(d) The redetermination referred to above shall be final and binding, unless the appellant, within 14 days of the mailing of such redetermination, files a request in writing addressed to the Corporation Counsel, requesting the County Commission to rehear the redetermination findings. No appeal shall be made to the County Commission, unless:

- (1) A redetermination was made and timely appealed;
- (2) A redetermination hearing has been waived by the appellant and the redetermination hearing panel; or
- (3) A redetermination was not made due solely to the fault of the city.

(e) The appeal to the County Commission shall be a two-step process limited to the issues raised in the redetermination as follows:

- (1) Within 14 days of receipt of an appeal of a redetermination, the Board Chair shall set up a prehearing conference with the Chair of the Ways and Means Committee. At the prehearing conference the following matters shall be determined:

- a. The rules of the hearing;
- b. The date of the hearing;
- c. The issues which may be raised from the redetermination;
- d. The likelihood of settlement; and
- e. Any other pertinent matters.

- (2) A hearing before the County Commission.

(f) The denial, suspension or revocation shall be effective during such appeal or until the Commission shall reverse the administrative decision. The Commission may confirm the denial, suspension or revocation, or provide for revocation instead of suspension, or may reinstate or order the issuance of the license. The action of the commission shall be final.

30-341. License suspension or revocation generally.


(a) For cause shown, any license issued under this article may be suspended or revoked by the County Executive, after notice in writing, setting forth the substance of the charges and the time and place of a hearing thereon; which notice shall be delivered three days in advance, either personally to the licensee or to the principal place or location of the licensed activity, or by postage prepaid mail addressed to the licensee's last known address. Suspension or revocation may be in addition to any fine imposed. All fees paid shall be forfeited in case of revocation.

(b) The term "cause," as used in this section, shall include:

- (1) The conviction by the licensee of any felony or of a misdemeanor involving moral turpitude.
- (2) Any fraud, misrepresentation or false statement contained in the application for license or made in connection with the conduct of the licensed activity.
- (3) Preventing or refusing permission for the inspection by any proper city agent or official at any reasonable time of any portion of the premises where the licensed activity is conducted, or of the property thereof.
- (4) The doing or omitting of any act or permitting any condition to exist in connection with the licensed activity or upon any premises or facility used in connection therewith; which act, omission or condition constitutes a breach of the peace or constitutes a menace to the health, safety or general welfare of the public, or is forbidden by the provisions of this Code or established rule or regulation of the city or statutes, rules or regulation of the state applicable to the licensed activity.
- (5) The failure to obtain and maintain during the term of a license and any renewal or extension thereof, any local, state or other required professional governmental license, certification or authority for the trade, occupation or profession licensed hereunder.
- (6) The failure to obtain and maintain during the term of the license, or any renewal or extension thereof, the bonds and insurances required by any section of this Ordinance.

I, Cynthia Luczak, Clerk of the Board of Commissioners of the County of Bay, certify that the attached is a correct copy of Ordinance No. 52, Bay County Secondhand and Scrap Dealer Ordinance.

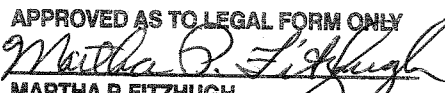
I have set my hand and affixed the seal of the County of Bay, State of Michigan, this 14th day of April, 2011.


CYNTHIA LUCZAK, Clerk

STATE OF MICHIGAN)
)-ss-
COUNTY OF BAY)

I, DONALD J. TILLEY, certify that I am the Chairman of the Board of Commissioners, County of Bay, State of Michigan, and that the above is a correct copy of an ordinance as it appears of record in the minutes of the County of Bay of March 8, 2011.


DONALD J. TILLEY, Chairman
Board of Commissioners

APPROVED AS TO LEGAL FORM ONLY

MARTHA R. FITZHUGH
BAY COUNTY CORPORATION COUNSEL
DATE: 4/5/11